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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Para Scientific Company

File: B-299046.2

Date: February 13, 2007

Hiram Reinhart for the protester.

Mogy E. Omatete, Esq., Department of Health and Human Services, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a procurement conducted under simplified acquisition procedures, agency's determination that it was in the best interests of the government to make a single award to the vendor that submitted the lowest total-priced quotation for all 22 items listed in a request for quotations for laboratory supplies was unreasonable where the record demonstrates that a second award to the protester for 6 of the requested items would have resulted in a lower aggregate cost to the government and there is nothing in the record to suggest that such an award would not have been in the government's best interests.

DECISION

Para Scientific Company protests the award of a contract to Fisher Scientific Company LLC under request for quotations (RFQ) No. NIH-NIDDK-06-985, issued by the National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Department of Health and Human Services, for laboratory supplies.

We sustain the protest.

The RFQ listed 22 items and the quantity of the items that the agency sought to purchase. For example, some of the items included "Pipet Sero Disposable 25ml 200/cs" with a quantity sought of 10 cases, and "Box with cover fiber board 3 inch 12/pack" with a quantity sought of 10 packs. RFQ at 2. Next to each of the items listed and quantities sought, the RFQ included blank spaces where vendors were to insert their unit price per item and total prices based upon the stated quantities. The

RFQ did not require that vendors submit prices for all items, or indicate whether a single award or multiple awards were contemplated.

The agency received quotations from eight vendors, including Fisher Scientific and Para Scientific, with Fisher Scientific's quotation providing a total price of \$32,159 for all items listed. Para Scientific's quotation, which did not include pricing for 2 of the 22 listed items, provided a total price for the remaining 20 items of \$67,739.¹ Contracting Officer's Statement at 2; Agency Report (AR), Tab 5, Para Scientific Quotation, at 3. The agency awarded a contract for the items to Fisher Scientific.²

The protester argues, among other things, that to the extent that its quotation included prices lower than those furnished by the awardee for any of the items solicited, the agency should have awarded a contract to the protester for those lower priced items.³ Protester's Comments at 1-2. The agency responds that "[a]lthough the RFQ package did not state that vendors were required to propose on all line items, it was in the Government[']s best interest to award to a vendor that could provide all requested items with the lowest price." Contracting Officer's Statement at 1-2.

Section 13.101(b)(1) of the Federal Acquisition Regulation (FAR) expressly recognizes that either single or multiple awards are permissible in the context of

¹ Neither Fisher Scientific nor Para Scientific qualified its quotation as "all or none."

² The RFQ did not identify any evaluation criteria, nor did it inform vendors of the basis for the agency's award selection. Although Federal Acquisition Regulation (FAR) § 13.106-2 affords contracting officers using simplified acquisition procedures, as here, discretion in determining how to conduct a procurement and in fashioning suitable evaluation procedures, this discretion does not permit a failure to identify significant evaluation factors in the RFQ or evaluating quotations on the basis of factors not announced in the RFQ. American Artisan Prods., Inc., B-278450, Jan. 30, 1998, 98-1 CPD ¶ 37 at 4. Rather, FAR §§ 13.106-1(a)(2) and 13.106-2(a)(2) specifically require that solicitations advise potential vendors of the basis upon which award is to be made, and agencies must conduct evaluations based on the criteria set forth in the solicitations. Id. Nevertheless, because price was the only term requested by the solicitation at issue here, price was necessarily the sole evaluation factor. Brewer-Taylor Assocs., B-277845, Oct. 30, 1997, 97-2 CPD ¶ 124 at 3.

³ The protester also argues that the agency's debriefing was inadequate. Whether or not an agency provides a debriefing and the adequacy of a debriefing are issues that our Office will not consider, because the scheduling and conduct of a debriefing is a procedural matter that does not involve the validity of an award. The Ideal Solution, LLC, B-298300, July 10, 2006, 2006 CPD ¶ 101 at 3 n.2; see Symplicity Corp., B-297060, Nov. 8, 2005, 2005 CPD ¶ 203 at 3 n.4.

simplified acquisitions,⁴ and our Office has consistently held that where, as here, a solicitation does not require a single award, multiple awards may be made. See, e.g., Weather Experts, Inc., B-255103, Feb. 9, 1994, 94-1 CPD ¶ 93 at 3 (invitation for bids (IFB)); Goodman Ball, Inc., B-217318, Mar. 25, 1985, 85-1 CPD ¶ 348 at 3 (IFB). Given that it was within the agency's discretion to make either a single award or multiple awards, we review for reasonableness the agency's exercise of that discretion in making a single award to Fisher Scientific. See Weather Experts, Inc., supra; American Bank Note Co., B-222589, Sept. 18, 1986, 86-2 CPD ¶ 316 (RFP).

Although the FAR recognizes that multiple awards may be made under FAR Part 13 procurements, neither the FAR nor case law provides any specific guidance as to when multiple awards are either appropriate or required in these procurements. The FAR does, however, provide guidance regarding single or multiple awards in the context of sealed bidding and negotiated acquisitions. For example, in the context of sealed bidding, the FAR advises that IFBs are to provide for multiple awards where the contracting officer determines that multiple awards "might be made if doing so is economically advantageous to the Government." FAR § 14.201-6(q). Section 14.201-8(c) of the FAR adds that after the receipt of bids, "[t]he contracting officer shall assume, for the purpose of making multiple awards, that \$500 would be the administrative cost to the Government for issuing and administering each contract awarded under a solicitation," and that "[i]ndividual awards shall be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs." In the context of negotiated acquisitions, the FAR requires that RFPs inform offerors that "the Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so." FAR § 52.215-1(f)(6); see FAR § 15.209(a) (requiring the inclusion of FAR § 52.215-1). Although neither Part 14 or Part 15 of the FAR is applicable to the simplified acquisition here, we believe the above-referenced provisions of these parts are instructive regarding the reasonableness of the agency's determination that multiple awards were not in the government's best interests.

The agency explains with regard to its determination to make a single award to Fisher Scientific as follows:

This award was for a fixed amount of items that are consistently offered commercially by vendors. The rationale for making one award was mainly

⁴ FAR § 13.101(b)(1) states, "In making purchases, contracting officers should-- (1) Include related items (such as small hardware items or spare parts for vehicles) in one solicitation and make award on an 'all-or-none' or 'multiple award' basis provided suppliers are so advised when quotations or offers are requested." As indicated above, the RFQ did not state whether a single award of all items would be made or whether multiple awards would be made.

due to making sound business and financial sense. To make multiple awards would create an administrative financial burden as well as ineffective use of Government resources. For example, to make more than one award on one requisition, it would create the same amount of administrative burden/resources for each subsequent award (i.e., staff time, administrative costs, shipping costs, etc.). Given the small amount of the procurement (\$32,159.12), it would have been a minimal saving for splitting this into two awards. So, in turn, one order is financially beneficially to the Government than making more than one award to multiple vendors. Thus, the Government determined that it was in its best interest to make one complete award which provide the best value for the Government.

Contracting Officer's Supplemental Statement at 1.⁵

Contrary to the agency's assumptions regarding the potential savings that could be achieved given the "small amount of the procurement," a review of the item-by-item prices quoted by Para Scientific and Fisher Scientific reveals that Para Scientific's prices for six of the items are substantially less than the prices quoted by Fisher Scientific, and that the agency would have saved the government, absent the consideration of any administrative costs incurred, a total of \$8,363.97, had the agency made an award to Para Scientific for those items.⁶ Given that in an IFB context the administrative expenses are assumed to be \$500 for each additional award, the savings that could have been achieved through an additional award to Para Scientific would appear to more than offset any additional administrative costs the agency would have incurred, and as such, there is nothing in the record to suggest that it would have been other than "economically advantageous to the Government" or other than "in the Government's best interest" to make such an award.⁷ See FAR §§ 14.201-6(c), 52.215-1(f)(6); Weather Experts, Inc., supra. Accordingly, we find that the agency's determination here lacks a reasonable basis, and that the agency should have awarded an additional contract under this RFQ to Para Scientific for the six items for which Para Scientific quoted lower prices.

⁵ In contrast to this post-protest statement, there is no indication in the contemporaneous record that the agency engaged in any analysis as to whether it was in the government's best interests to make a single award or multiple awards.

⁶ The six items are: (1) "Art 1000G filter TP singles 500/pk," (2) "Box with cover fiber board 3 inch 12/pack," (3) "200 ul ylw bevtip rack ster960/P 5 pack/case," (4) "Cryovial SS 2ml 500/case," (5) "Tissue/tek cryomold 100/pack," and (6) "Cryovial ss 1.2ml 500/case."

⁷ As noted, the agency has provided no non-cost related reasons why these items need to be procured from a single vendor.

The protest is sustained. The agency has informed our Office and the protester that because Para Scientific's initial protest to our Office was not filed within 10 days of the award to Fisher Scientific "[n]o stay of contract award was issued." Agency Corrective Action Letter (Nov. 6, 2006). The agency adds here that as of November 6, it had taken delivery of 21 of the 22 items. Given this, we recommend that the agency reimburse the protester its quotation preparation costs, as well as the costs of filing and pursuing its protests, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2006). In accordance with section 21.8(f) of our Regulations, Para Scientific's claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of the decision.

Gary L. Kepplinger
General Counsel